

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ROBERT JOHN CARRIER, #K0013

PETITIONER

V.

CIVIL ACTION NO. 3:22-CV-273-KHJ-RPM

WARDEN OF EMCF

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge Robert P. Myers, Jr. (“Report”). [12]. It recommends that Respondent Warden of EMCF’s [9] Motion to Dismiss be granted and that Petitioner Robert John Carrier’s 28 U.S.C. § 2254 petition be dismissed as successive, or in the alternative, as time-barred. Written objections to the Report were due by January 17, 2023. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636.

When no party has objected to a magistrate judge’s report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1). In such cases, the Court applies the clearly erroneous, abuse of discretion, and contrary to law standards of review. *See United States v. Brigham*, 569 F.3d 220, 228 (5th Cir. 2009) (citation omitted).

A state court sentenced Carrier to 47 years’ imprisonment for armed robbery on October 1, 1999. [9-1]. After appealing his judgment, the Mississippi Court of

Appeals affirmed his conviction and sentence. *Carrier v. State*, 815 So. 2d 1222 (Miss. Ct. App. 2001). The Mississippi Supreme Court later denied his petition for writ of certiorari on May 9, 2002. *Carrier v. State*, 821 So. 2d 128 (Miss. 2002).

On May 3, 2019, Carrier filed his first § 2254 petition challenging his state-court convictions and sentences. Am. Pet. Writ Habeas Corpus, *Carrier v. Shaw*, No. 3:19-CV-236 (S.D. Miss. Dec. 18, 2019), ECF No. 5. The district court dismissed Carrier’s petition as time-barred under the Antiterrorism and Effective Death Penalty Act’s (“AEDPA”) one-year limitation period, 28 U.S.C. § 2244(d). *Carrier v. Shaw*, 3:19-CV-236, 2019 WL 6908047, at *2–4 (S.D. Miss. Oct. 3, 2019), *R. & R. adopted*, 2019 WL 6895966 (S.D. Miss. Dec. 18). The court held that Carrier’s state conviction became final on August 7, 2002, and he was not entitled to equitable tolling. And because Carrier did not file his petition by August 7, 2003, his petition was untimely. *Id.* at *3.

On May 23, 2022, Carrier filed his second § 2254 petition in this Court. [2]. Judge Myers recommends dismissing Carrier’s petition on two grounds. *See* [12] at 2–3. First, this Court lacks jurisdiction to consider Carrier’s petition because it is his second petition, and he did not obtain the Fifth Circuit’s authorization before filing the petition. *Id.* (citing 28 U.S.C. § 2244(b)(3); *Adams v. Thaler*, 679 F.3d 312, 321 (5th Cir. 2012)). Alternatively, Carrier’s petition should be dismissed as time-barred by AEDPA’s one-year limitation period. *Id.* at 3.

Carrier did not object to the Report, and his time to do so has passed. The Court finds the Report is not clearly erroneous or contrary to law. Accordingly, the Court adopts the Report as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [12] of United States Magistrate Judge Robert P. Myers, Jr., entered in this cause is adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that Defendant Warden of EMCF's [9] Motion to Dismiss is GRANTED, and Petitioner Robert John Carrier's 28 U.S.C. § 2254 petition is DISMISSED. A separate final judgment will issue this day.

The Court also holds that a certificate of appealability shall not issue. To obtain a certificate of appealability, Carrier must show "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added). Carrier satisfies neither prong.

SO ORDERED AND ADJUDGED this the 25th day of January, 2023.

s/ Kristi H. Johnson
UNITED STATES DISTRICT JUDGE